O. Groundnut

1953. File No. Oilcakes/53

48/53

P 97 F

Legal Department

G BRANCH

Subject:— Opinions on the

Groundnut Oilcakes

File No. O. Groundnut Oilcakes/53

Gen. 194 e.

G-48/53

C O N T E N T S.

Legal Department File No. O. Groundnut Oilcakes, 53. 4 48

Sr. No.	R.I. / O. No.	Subject	Pages.
		Opinions under the Bombay Groundnut Oilcakes (Procrument) order, 1953.	
	~~O-142~~ 3-3-53.	Question regarding exempting Millers from the provisions of clause 3 of the order if the millers give to Govt. 1/8th or 1/10th of their total annual production in one lot or in separate lots within a specified short period.	1-2.
2.	~~O-336~~ 25-7-53.	Re: Supply of ground-nut oilcakes by certain company to Govt. question regarding prosecuting the company for not making the supply in time.	
3.	~~O-337~~ 29-7-53.	Re: Release order issued in favour of certain Mill on the condition that the Mill should supply to Govt. 10% of the annual production.	
		Whether such a direction is reasonable.	7-10.
4.	~~O-339~~ 16-7-53.	Re: Supply of groundnut oilcakes by certain Mill to Govt. Dispute regarding payment of price to the Mills.	11-12.
	~~O-387~~ 3-7-53.	Whether notwithstanding the cancellation of the said order, oilcakes, covered by release orders, issued under it while it was in force can be procured during the period of their validity.	13-14.
	~~O-345~~ 14-7-53	Re: Prosecution for not supplying the oilcakes covered by the release order before the stipulated period.	15-16.

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S. No.	R.I. / O. No.	Subject	Pages.
7.	~~G-450~~ 31-7-53.	Re: Release order issued to certain Mill asking them to supply certain quota of Govt. Cancellation of this order and issue of a fresh order by which the Mills were asked to supply less quantity than the quatity mentioned in the previous order. Whether it is necessary either to return the excess quantity or pay compansation to Miller if the Millers actually makes supplies according to previous order as he did not receive the subsequent order in time.	17-20.
8.	~~G-413-2-53~~ G-494 18-8-53.	Re: Prosecution of a Miller for contravention of the provisions of clauses 3 and 4 of the order.	21-26.
9.	G-1133-Confl. 28-8-53.	Re: Groundnut oilcakes procured by Govt. from different Mills under the said order. Disposal of stock lying with Govt. as the same was no longer required for famine relief.	27-30.
10.	G-287 15-5-53.	1) Whether Govt. is entitled to issue an order to the Millers to reserve oilcakes manufactured by them and to lift the despite the fact that the Millers have entered into forward contracts for the sale of the oilcakes. 2) Whether it would be open to Govt. to requisition stocks in the hands of the purchasers.	31-36.
11.	9882 27-4-53.	L.D. Circular regarding withdrawal of prosecutions. Procedure to be followed in respect of .	37-38.
12.	G-671 29-10-53.	Whether the offences committed under the said order are compoundable.	39-44.
13.	G-666 27-10-53.,	Re:Prosecution for not reserving the 50 per cent stock for Govt. as required by clause 3 of the order.	45-46.

Office of the R.L.A.

The Bombay Groundnut Oilcakes (Procurement) order, 1953 does not contain any provisionx for granint exemptions from the provisions of the Order as proposed to be given by Agriculture and Forests Department. The exemptions can therefore be granted only if the order is suitably amended.

Sd/-

Remembrancer of Legal Affairs.

U.R. to A. & F.D., No. G-142, dated the 3rd March 1953.

EVY. 14/8.

Legal Department.
G-720 dt. 27-7-53.

A.S.(@)

Please see R.L.A's opinion No. 415 dated the 24th July 1953.

In pursuance of clause 3 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 Messrs. Madhu Oils Ltd of Bailhongal, District Belgaum were direct to sell and deliver to the Collector of Belgaum about 27 tons of groundnut oilcake held by them from out of the 50 per cent production preserved within a period of 15 days from the date of the ~~xx~~ issue of the said order subject to the condition that the miller should give delivery of groundnut oilcake in sound second-hand gunny bags without any holes or patching or stiching or darning on the surface of the bags. This order was issued on 30th May 1953 by the Secretary to Government, A. & F.D. It seems Messrs. Madhu Oils Ltd expressed their inability to give delivery of the groundnut oilcake before 13-6-1953 on the ground that they had no sufficient sound gunny bags for filling the groundnut oilcakes. The Collector of Belgaum to whom this request was made wrote to the Secretary, A. & F.D. on 18-6-53 for extending the period of the release order by a fortnight. The Bombay Groundnut Oilcakes (Procurement) Order, 1953 was cancelled on 24th June 1953. It is now reported by the Collector that Messrs Madhu Oil Ltd are unwilling to give delivery of ground-nut oilcake till fresh release orders are received and they are also refusing to hand over groundnut oilcake on the ground that the Bombay Groundnut Oilcakes (Procurement) Order has since been cancelled by Government. The

Collector has, therefore, requested the A. & F.D. for order as to what steps should be taken in the matter. The W.S., A. & F.D. is of the opinion that as time was asked for by the Mill and was given, it does not appear that the Mill can be prosecuted. The R.L.A. is requested to advise whether it would be feasible to prosecute the Mill.

Please see U.R. to A. & F.D. No. G-436, dated the 25th July 1953.

EVY. 14/8.

Legal Department.

Messrs. Madhu Oils Limited asked for extension of time which was not refused and they were not expressly told to deliver oilcake before the expiry of the period mentioned in the release order. In view of this, it would not be now feasible to prosecute them for non-delivery of the groundnut oilcakes. The view taken by the Under Secretary, Agriculture, and Forests Department is correct.

Sd/-

Secretary to Government.

U.R. to A. & F.D., No. G-436, dated the 25th July 1953.

EVI. 14/8.

L.D.R.I. No. 17044/A, dated 15-7-53.

Submitted.

After issue of circular letter No. 8049/18312/C, dated 10-4-53 by Government in A. & F.D. to all oil millers in the State of Bombay, M/s. Siddeshwar Oil Mills, Bagalkot, District Bijapur wrote to A.S., A. & F.D. stating that they were agreeable to Government's proposal and were prepared to give 38 tons of groundnut Oil-cakes as per 10 percent of the production of 382 tons during the year from 1-11-51 to 31-10-52 at a reasonable price. They went on to explain the difficulties experienced by the Oil millers and finally requested that the price of groundnut oilcake be fixed reasonably i.e. at Rs. 50/- less than the ruling market rates.

By order No. 8049-G, dated 14-5-53 issued under section 7 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 the said mills were exempted from the operation of the said Order, subject to the condition that they would deliver to Government at the rate of Rs. 100/- per ton ex-mill, including the cost of sound servicable gunny bags, a total quantity of 38 tons, 4 cwts. of groundnut oilcake including the quantity of 14 tons, 6 cwts. 3 qrs. and 18 lbs. already released from their mill's under the said Order. A release order for the balance of 23 tons, 17 cwts. 0 qrs. and 10 lbs. was simultaneously issued under clause 3 of the G.N.O. (P) Order, 1953 directing the mills to sell deliver the said quantity of groundnut oilcakes to the Collector of Bijapur within a period of 15 days from the date of the issue of the order.

By letter dated 10-6-53 the mills informed

the A.S., A. & F.D. that it was not possible for them to give delivery of the quantity of groundnut oilcake covered by the release orders but they were prepared to deliver the said quantity ~~xf~~ ~~xxxxxxxxxxx~~ instalments as early as possible. No extension of time appears to have been given to the mills. The latter have now requested for enlightenment on the point whether the cancellation of Groundnut Oilcakes (Procurement) Order applies to pending deliveries. The A. & F.D. proposed to inform the mills that since the Bombay Groundnut Oilcakes (Procurement) Order is cancelled delivery of the stock released under Order, dated 14-5-53 need not be given. The U.S., A. & F.D. is of the opinion that since the release order was in fulfilment of the condition of giving stocks equivalent to 10 percent of the production of 1951-52 the mills may be informed that it should deliver to the Collector the quantity mentioned inthe release order. He thinks that such a direction is reasonable even though no criminal prosecution would be possible. L.D. is requested to confirm the view taken by U.S., A. & F.D.

9.

Legal Department.

The view taken by the Under Secretary, Agriculture and Forests Department is correct.

Sd/-

Secretary to Government.

U.R. to A. & F.D., No. G-447, dated the 29th July 1953.

EVY. 14/8.

Legal Department.

The millers who have sold and delivered stock to the Collector under release orders after they had lapsed because of the Cancellation of the Bombay Groundnut Oilcakes (Procurement) Order, 1953, have now requested Government to pay them at the market rate. The Under Secretary, Agriculture and Forests Department is of the opinion that unless it is possible for the millers to successfully sue Government for the difference between Rs. 100/- and the market price, Government may not take any action on the telegrams of the millers at pp. 9-13/c. The papers are referred to the R.L.A. for advice on this point.

The sale and delivery of the stock was made under an order which was invalid and unenforceable. The sale is therefore invalid and the stock may either be kept by Government by agreeing to pay the price quoted by the millers or returned to the millers.

The Agriculture and Forests Department has also raised another question which is this. Whether delivery given after 25th June 1953 in pursuance of fulfilling the obligation of supplying 10 percent of the stock of 1951-52 will have to be paid for at the market rate.

Clause 7 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 provides that the State Government may by a general or special order, exempt any person or class of persons from the operation of all or any of the provision of this order subject to such condition as may be specified in the order. Some of the millers were exempted from the operation of the order on condition that they shall deliver to Government at the rate of Rs. 100/- per ton ex-mill a specified quantity of groundnut oilcake. The quantity, according to the circular issued by Government represented 10 percent of the 1951-52 production. If the miller has taken the exemption, he must fulfil the condition under which the exemption was given. Consequently

even if the delivery was given after the cancellation of the order, Government would not be liable to pay the miller at the market rate in such cases.

Sd/-

Additional Secretary to Government.

U.R. to A. & F.D., No. G-419, dated the 16th July 1953.

EVY. 14/8.

Legal Department.

The question raised for R.L.A's opinion is whether notwithstanding the cancellation of the Bombay Groundnut Oilcake (Procurement) Order, 1953, oilcake covered by release orders issued under it while it was in force can be procured during the period of their validity.

The answer to the question is in the negative. The release order will also lapse on the cancellation of the parent order under which they were issued. Even though the period for selling and giving delivery mentioned in the release orders may not have expired, Government cannot enforce those orders as the whole orders lapsed on cancellation of the Bombay Groundnut Oilcake (Procurement) Order, 1953.

Sd/-

Additional Secretary to Government.

U.R. to A. & F.D., No. G-387, dated the 3rd July 1953.

EVY. 14/8.

Legal Department.

The Bombay Groundnut Oilcakes (Procurement) Order, 1953 was cancelled on the 24th June 1953. (Vide G.N., A. & F.D. No. 8049-G, dated 24-6-53). While the Order was operative, a release order was issued to Madhu Oil Mills, Bailhongal, District Belgaum, for selling and delivering about twenty seven tons of groundnut oilcake to the Collector of Belgaum within a period of fifteen days from the date of the order. The sale and delivery should have therefore taken place before 15th June 1953. The Agriculture and Forests Department states that the miller has committed a breach by not delivering the oilcake covered by the release order before the stipulated period. That Department does not however know whether any delivery was given before the cancellation of the Bombay Groundnut Oilcakes (Procurement) Order, 1953. If it is not given, that Department wants to know whether it would be ~~in order~~ legally in order if the miller is informed that he would be prosecuted unless he supplies the quantity concerned by the release order. The release order cannot now be validly extended but the Department wants to know whether it would be in order to procure the cake if the party is willing to honour the commitment.

Even though the Bombay Groundnut Oilcake (Procurement) Order, 1953 has been cancelled, the miller can be prosecuted for breach of the release order issued on 30th May 1953 if he has not sold or delivered the stock to the Collector within the stipulated period. Before doing so, the reasons for non-delivery will have to be ascertained as sale and delivery constitute a bialateral transaction and if the Collector did not approach the mill for delivery, that fact will have to be taken into account. It would be wrong to enforce delivery now under threat of prosecution. However if after knowing the legal position, the mill is prepared to give delivery, there is no objection to take it as the sale would be an ordinary one and not in pursuance of any statutory provision.

Sd/-

Additional Secretary to Government.

Legal Department.

Certain oil Millers were asked by the Secretary to Government, Agriculture and Forests Department to sell and deliver to the Collector certain amount of oilcake at a specified price from out of 50 percent of their production in pursuance of clause 3 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953. These release orders were cangelled on a sunsequent date and an order was issued under clause 7 of the said Bombay Groundnut Oilcakes (Procurement) Order, 1953 directing that the mill be exempted from the operation of the said order subject to the condition that the millers deliver to Government 10 percent of their production of the year 1951-52. The quantity which they were required to deliver to Government under this subsequent order was less than the quantity which they were required to deliver to Government under the first order. It is stated that before subsequent order reached them they had given delivery of the quantity mentioned in the first order to the Collector. They now request that the excess quantity which was given should be returned to them. In this connection the Agriculture and Forests Department state that it seems necessary to cancel the exemption order and the subsequent release orders. The Legal Department is requested to consider whether the subsequent release order can be cancelled or whether it is necessary either to return the excess quantity covered by the previous release order or pay compensation to the miller.

As the Bombay Groundnut Oilcakes (Procurement) Order, 1953 has been cancelled on the 24th June 1953, it is not now possible to issue any order cancelling any orders issued thereunder.

All orders issued under the said order have lapsed on the cancellation of the main order. Besides the cancellation of subsequent order by which the previous

Order is cancelled will not effect the revival of the previous order. It would not therefore be proper to cancel any order either granting exemption or releasing 10 percent of the production issued as per condition in the exemption order. The only question that will have to be considered is whether the excess quantity should be returned or compensation for it should be paid to the miller. If the delivery has been made by the miller under the first release order and taken by the Collector before the cancellation of that order then it can be argued that the order was spent up or exhausted on such delivery and the subsequent cancellation of such an order was ineffective. If the sale and delivery took place after the order was cancelled, then R.L.A's opinion No. G-419, dated the 16th July 1953 would apply and the sale would be invalid and excess quantity will have to be returned or the price therefor quoted by the miller will have to be paid.

Sd/-

Secretary to Government.

...R. to A. & F.D., No. G-450, dated the 31st July 1953.

EVY. 14/8.

L.D.R.I. No. G-948, dt. 29-7-53

Submitted.

The facts in brief are as follows:-

By release order No. 3215/G-359, dated nil May 1953 issued under clause 3 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 the Shankar Oil Mills Sangamner, District Ahmednagar were directed to deliver seven tons, ten hundred weights, three quarters and twenty six lbs. of groundnut oilcake from out of the fifty percent production reserved, at Rs. 100/- per ton to the Collector or Ahmednagar within a period of 15 days from the date of the issue of the order. It appears from the papers that the order was issued on 25th May 1953.

The District Magistrate, Ahmednagar has reported that the Mamlatdar, Sangamner deputed his godown keeper to take delivery but though the latter went thrice to the mill-owner Shri K.S. Mungi, delivery was not effected. The Mamlatdar called the miller to his office but he did not come, so the S.A.K. was deputed to make enquiries. He recorded the statement of the miller in which the latter put forth the following pleas viz:-

1) He did not give delivery as he had not received the release order.

2) He had reserved the stocks amounting 7 to 8 tons for disposal to Government but the pressing demand from the agriculturists compelled him to sell the oilcakes. He has now only 2.5 tons in his possession.

The D.M. has further reported that the miller has not submitted statements of stocks of groundnut oilcake reserved for Government since week ending 5-4-53. *

According to the District Magistrate the miller has contravened clauses 3 and 4 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 and thus rendered himself liable to prosecution.

In his letter dated 3-7-53 to the Secy. to Govt. A. & F.D., Shri Mungi has stated that he was prepared to give delivery of the groundnut oilcakes on demand by the Supply Aval Karkun even though he has no yet received the release order in question. According to him the godown keeper had promised to come on the next day to take delivery but did not turn up.

In view of the fact that the miller is willing go give delivery even though the Bombay Groundnut Oilcakes (Procurement) Order, 1953 has been cancelled, the Agriculture and Forests Department proposes to inform the miller that Government would favourably consider the question of condoning the offence committed provided the quantity due to Government is supplied although the procurement of the quantity cannot be enforced.

In view of Additional Secy's opinion No. G-415 dated 14-7053 the proposed draft is shown to R.L.A. in order to consider the propriety of giving such an option.

Please See U.R. to A. & F.D., No . G-494, dated the 18th August 1953.

EVY. 14/8.

Legal Department.

As pointed out in Additional Secretary's opinion No.G-415, dated the 14th July 1953 it would be wrong to enforce delivery under threat of prosecution. The draft letter to the proprietor of Shankar Oil Mills, Ahmednagar at p. 11/C, informing him that Government would consider condoning the offence if he agrees to sell oilcake to Government at a specified rate is not in order. A simple letter may be addressed to him asking him to sell the cake to Government as per the offer contained in his letter dated the 3rd July 1953.

Sd/-

Secretary to Government.

U.R. to A. S.D., No. G-494, dated the 18th August 1953.

EVX. 16/8.

L.D.R.I. No. G-1015 dt. 14-8-53

Submitted with reference to U.R. No. G-419, dated 16-7-53. Also see opinion No.G-447, dated 29-7-53.

It appears that supplies of Groundnut Oilcake are no longer required for famine relief and therefore it is not considered advisable to procure groundnut oilcake from the exempted millers even though this causes inequity amongst the millers viz. those who have delivered the entire stocks due from them and those who have failed to do so.

Shree Vithal Oil Mills which has apparently delivered the whole quantity due permit in accordance with the condition under which it was exempted has given notice that if Government does not procure stocks from all the millers from whom 10 percent of their stock was due they should be paid at the market rate for the delivery effected by them. According to them lack of uniform policy on behalf of the Govt., amounts to improper use of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (This argument is not correct).

Further, groundnut oilcake wrongly procured on or after 24-6-53 has to be returned to the millers in view of the cancellation of the Groundnut Oilcake (Procurement) Order, 1953 on 24-6-53. At the same time certain quantities are lying undisposed of with the Collector. The Agriculture and Forests Department wants to know whether the quantities lying with the Collectors can be used for settling the claims of the Millers to whom groundnut oilcake is to be returned. R.L.A. is also requested to advise whether Shri Vithal Oil Mills is likely to succeed in the threatened legal action.

P.T.O.

Legal Department.

Points (1) and (2) in the Under Secretary, Agriculture and Forests Department's note dated the 8th August 1953 are confirmed.

Sd/-

Secretary to Government.

U.R. to A. & F.D., No. G-1133-Confl, dated the 28th August 1953.

EVY. 16/8.

Office of the R.L.A.

Under clause 3 of the Bombay Groundnut Oilcakes (Procurement) Order, 1953, every miller is required to reserve 50 per cent. of the groundnut oilcake production in the mill every week and deliver it to the Government or any person authorised by it on presentation of a release order. It appears that Government desire to take action under the said clause in regard to the oilcake production certain mills in the months of May and June this year. It is alleged that some of the mills have entered into forward contracts and have sold most of their production certain purchasers.

2. The first question for consideration which is raised in these papers in whether Government is entitled to issue an order to the millers to reserve oil cakes manufactured by them, and to lift them despite the fact that the millers have entered into forward contracts for the sale of the oilcakes. The Bombay Groundnut Oilcakes order has been issued under section 3 of the Essential Supplies (Temporary Powers) Act, 1946. Under section 6 of the Act an order made under the Act has effect notwithstanding anything inconsistent therewith contained in any enactment or instrument. The order therefore overrides an agreement or instrument entered into by the millers. Government will not therefore be liable in damages to the millers or the persons with whom they have entered into agreement or contract, if the effect of the order or any lawful action taken thereunder is to affect such agreement or contract.

3. The second question which is raised by millers is that Government should give them a direction to repudiate the forward contracts. As stated above, section 6 of the Essential Supplies (Temporary Powers) Act, 1946, expressly provides that an order under the Act overrides other enactments or instruments. Moreover, under section 56 of the Indian Contract Act, if the freezing and lifting order issued by Government has made it impossible for the millers to perform ~~xxx~~ the contracts entered into by them, they would, not ordinarily be bound to perform the same. Thus in the re Shipton Anderson & Co. (1915) 3 K.B. 676, it was held that where by a contract, the owner of wheat had agreed to sell it, but before delivery the wheat was requisitioned by Government under the powers of an Act, it was held that the seller was excused from the performance of the contract. But it would be difficult to assess precisely the liability of the millers in this case. The terms of forward contracts alleged to have been entered into by them are not in these papers. In any case it does not appear how Government is concerned with this question. Moreover, under the Groundnut Oilcake Order only 50% of the strocks are frozen and can be appropriated for the use of Government. The balance of 50% of the stocks is at the disposal of the Millers and if the terms of the forward contracts permit can be apropriated towards their performance. Although therefore it may be possible to hold that the millers are not excused from the performance of the entire contracts, they can be excused to the extent of the moiety of their stocks; but the other moiety can be required to be delivered towards the part performance of their contracts.

4. The next question is whether it would be open to Government to requisition stocks in the hands of the purchasers and for that purpose whether it would be open to Government to require the Mills to give information regarding the dates on which the stocks will be delivered to the purchasers. The Bombay Groundnut Oilcakes (Procurement) Order 1953, referred to above will not apply in this case. But it would be open to Government, if the powers in that behalf have been delegated by the Government of India, to requisition the stocks in the hands of the purchasers by separate order under section 3(2)(f) of the Bombay Essential Supplies (Temporary Powers) Act, 1946, and under section 3(2) (h) to require the mills to furnish to Government the necessary information in the matter.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. G-287/A, dated the 15th May 1953.

EVY. 16/8.

Withdrawal of Procutions.

GOVERNMENT OF BOMBAY.
Legal Department.
Circular No. 9882/A.
Bombay Castle, 27th April 1953.

Attention of all the Secretariat Departments is invited to Instruction No. 40(1)(c) of the Instructions regarding the business of Government issued under Rule 14 of the Rules of Business made under Article 166 of the Constitution of India and they are requested to see that all cases of withdrawal of prosecution envisaged by that Instruction are referred to the Legal Department as required therein. Government is further pleased to direct that in all such cases where the R.L.A. recommends withdrawal of the prosecution, the papers should be submitted to the Chief Minister (Home) through the Secretary, Home Department, before the orders are issued.

2. In the mofussil power to sanction withdrawal is left with the District Magistrate. If the District Magistrate makes a reference to Government the procedure indicated in the above paragraph should be followed.

3. These orders are in modification of the instructions issued in Political and Services Department Circular No. 1581/34, dated the 2nd August 1952.

By order and in the name of the Governor of Bombay,

Sd/-

J.R. DHURANDHAR,

Secretary to Government.

To

All Departments of the Secretariat (except the Separate Department),

Copy forwarded with compliments for information to the Secretary to the Chief Minister.

L.P.RI. No. C-1081, dated 3-9-53.

Submitted with reference to U.Rs. Nos. 11955/A and 12741/A, dated 28-5-53 and 11-6-53 respectively.

The facts in brief are as follows:-

On receiving the statements of stock production from 31-1-53 to 14-3-53 from the owner of the Dodashidppa Aribenchi Ginning and Oil Mills, A. & F.D. requested him to submit statement in the form prescribed in the Bombay Groundnut Oilcakes (Procurement) Order, 1953 showing the quantity of groundnut oilcake reserved for Government. To this he replied that he had not reserved any stock for Government for reasons stated in his letter (referred to below) dated 2-2-53 and that he would reserve stocks for Government as soon as his contract was completed. Thereupon A. & F.D. called upon the miller to show cause why he should not be prosecuted for breach of the Bombay Groundnut Oilcakes (Procurement) Order, 1953. On receiving his explanation he was informed that unless he agreed to surrender to Government a total quantity of groundnut oilcake equal to 50% of his total production from 19-1-53 to 15-4-53 within one month Government would launch prosecution proceedings against him. The miller then petitioned to the M. (A. & F.D.) asking for 4 months time to deliver 720 bags of oilcakes due to Government and requesting that criminal case No. 330 of 1953 filed against him in the court of the Resident Magistrate, First Class, Remdurg fro breach of the Bombay Groundnut Oilcakes (Procurement) Order, 1953 may be withdrawn. In reply he was asked to furnish a statement showing total quantity of groundnut oilcake reserved for Government etc. Then the papers were referred to the Legal Department stating whether the procedure laid down in circular No. 9882/A,

dated 27-4-53 should be followed in this case. R.L.A. held in the affirmative (See No. 11955/A, dated 28-3-53. The papers were again referred to L.D. with reference to the proposal for withdrawal in accordance with the procedure laid down in the aforesaid circular. Before agreeing to the withdrawal A. & F.D. were requested to furnish certain particulars (See U.R. No. 12741, dated 11-6-53. A. & F.D. therefore called for particulars from the Collector.

The particulars as furnished by the Collector are as follows:-

As Shri Magundappa Basappa Aribenchi, owner of the Dodashidappa Aribenchi Ginning and Oil Mills, Ramdurg had made a contract with customers of Gokak, Yargatti, Hukund and Katkol to supply 2,000 bags of groundnut oilcake he made an application to the Government on 2-2-53 intimating that he was unable to reserve half of the production of groundnut oilcake for Government as required by the Bombay Groundnut Oilcakes (Procurement) Order, 1953. No reply was given to this intimation. When the Police Sub-Inspector, Ramdurg checked the above mentioned oilmill on 19-3-53 he found that though, 2,560 B. Mds. of Groundnut Oilcakes were produced by the miller from 16-1-53 to 4-4-53 he had failed to reserve 50% of the production i.e. 1280 B. Mds. of the cakes for delivering to Government. He therefore attached 38½ bags of groundnut oilcakes belonging to the Miller. After thorough investigation the Police Sub-Inspector, Ramdurg, submitted charge sheet to the Court of the Magistrate, First Class and Civil Judge Ramdurg on 18-4-53 against the accused under section 7 Essential Supplies (Temporary Powers) Act, 1946. The miller represented his case to the District Magistrate hence the latter made confidential enquries through the Mamlatdar, Ramdurg and found that the miller had no dishonest intention to deceive Government, so he accorded sanction to withdraw the prosecution against accused (Miller) under section 494 Cr. P.C. on 20-7-53.

A. & R.D. has now stated that as the condition on which Government decided to withdraw prosecution cannot be fulfilled in view of the cancellation of the Groundnut Oilcakes (Procurement) Order, 1953 and since L.D. has advised against bargaining with the offenders, the prosecution launched may not be withdrawn. That Department now proposes to compound the offence on the condition that the miller sells to Government at Rs. 100/- per ton all the cake that was due from him. It is proposed to use the cake that was due for returning to the millers from whom cake has been procured after 24-6-53. The papers have been forwarded to L.D. for advise.

1) Whether the Collector can be asked to compound the case.

(2) Pending decision on the question whether the millers referred to at (A) above will accept cake in return, whether Collector can be asked to inform the court that Government is considering the question of seeking the Court's consent to compound the case so that the Court may postpone the case.

43.

Office of the R.L.A.

Although the Agriculture and Forests Department have used the expression 'compounding of the suit' in their note at page 16 ante their intention appears to be to compound the offence committed by the miller under the Groundnut oilcakes (Procurement) Order, 1953. The offences under this Order are not compoundable (vide section 345 of the Criminal Procedure Code) and the questions raised by the Agriculture and Forests Department therefore do not survive.

Sd/-
Remembrancer of Legal Affairs.

U.R. to A. & F.D., No. G-671, dated the 29th October 1953.

EVV. 16/8.

Office of the R.L.A.

From the miller's statement at page 7/C it appears that the miller failed to reserve 50 per cent stock as required by clause 3 of the Groundnut Oilcakes (Procurement) Order, 1953. But in the absence of the Panchnama of the stock, prosecution cannot succeed merely on the statement of the godown keeper and the Mamlatdar, Sangamner. If prosecution is to be launched the fact that 50 per cent stock was not reserved for Government will have to be proved from the account books of the mills. The admission of the owner in his above statement is not categorical but is inferential and may not be considered by the Court as of any value.

A prosecution under clause 4 of the said order for failure to furnish weekly statements after the 5th April 1953 would lie if the mill was producing cake after that date.

Sd/-

Remembrancer of Legal Affairs.

U.R. to A. & F.D., No. G-666, dated the 27th October 1953.

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